IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Writ Petition No. 828 (S/S) of 2003

Vijay Chandra Bahuguna & another ... Petitioners

Versus

State of Uttaranchal & others ... Respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Pankaj Purohit learned counsel for the petitioners and learned standing counsel for the State.

The petitioners by means of this petition have prayed for issue a writ, order or direction in the nature of mandamus commanding the respondents to consider the petitioner no. 1 for appointment on the post of assistant Teacher L.T. Grade Hindi and petitioner No. 2 on the post of Assistant Teacher L.T. Grade Physical Training Instructor after considering and awarding quality points on their post graduation degrees.

Brief facts of the case are that the petitioners no. 1 and 2 possess the essential qualification and are eligible to be appointed to the post of assistant Teacher L.T. Grade in the State of Uttaranchal. Petitioner No. 1 is M.A. B.Ed. and petitioner No. 2 is B.P.Ed. and M.P.Ed.

Respondent No. 3 issued an advertisement on 24.06.2002 in daily newspaper Amar Ujala dated 25.06.2002 inviting application for the post of Assistant Teacher L.T. Grade in Garhwal Mandal for various subjects including Hindi and Physical Training for men and women branches. The advertisement contained a stipulation that the candidates whose final examination had been completed before the date of advertisement and who were awaiting for their results may

apply and such candidates shall submit their mark-sheets of the final year examination within 3 days from the declaration of their results.

Petitioner No. 1 had appeared in M.A. Final year examination of 2002 from Garhwal University and the petitioner No. 2 appeared in final year examination of M.P.Ed in the year 2002 from Nagpur University. Before the issuance of advertisement, their examinations were already completed and at the time of submission of their application they were awaiting their results of their final examination. In pursuance of the advertisement the petitioners submitted their application form for the post of Assistant Teacher L.T. Grade. However, both the petitioners could not annex their mark-sheet of M.A. final examination and M.P.Ed final examination as the result of their examination was yet to be declared. the result of M.A. Final (Hindi) of petitioner No. 1 was declared on 15.07.2002 published in newspaper on 16.07.2002 and he was declared pass in second division. On 16.07.2002 itself the petitioner obtained the mark-sheet of M.A. final examination and personally presented the mark-sheet by hand in the office of respondent No. 3 on the same date i.e. on 16.07.2002. Similarly, the result of M.P.Ed final examination of petitioner no. 2 was declared on 24.07.2002 and he was declared passed with first division in M.P.Ed. final examination. the petitioner No. 2 obtained the mark-sheet of M.P.Ed. final examination on 25.07.2002 and personally handed over the same in the office of the respondent no. 3 on 27.06.2002 well within time as given in the advertisement.

Accordingly to the procedure adopted by the respondents as per rule to award quality points, the total point, which the petitioner No. 1 will get, comes to 60.52% and the petitioner no. 2 will get 71.43%. The respondents issued appointment letters for the post of Assistant Teacher in the subjects for which the petitioners applied but the petitioners were not given appointment.

It came to the knowledge of petitioners that those who have got less quality point marks in the respective subjects have been given appointments where as the petitioners who must get high quality points mark as per their educational qualifications, they were denied appointments and consequently they enquired from the office of the respondent from where they came to know that their post graduation degree was not considered for the purposes of giving quality points and as such their placement in the merits list lowered in the respective subjects. Consequently the petitioner preferred this petition.

The respondents have filed counter affidavit. in paragraph 4 of the counter affidavit which is sworn in by one Kuber Singh, Principal, Government Intermediate College Khirsu, District Pauri Garhwal, it is stated that as far as the question of awarding them bonus/quality points on their post graduation degree is concerned, it may be cleared that duly appointed Selection Committee vide its Resolution dated 02.01.2003 had decided that the merit list should be made on the basis of applications which were received till on 15.07.2002 because after the said date i.e. 15.07.2002, the documents/mark-sheets of the applicants were coming continuously and it was not possible to consider the same as there was no end to this.

In paragraphs 9 and 14 of the counter affidavit it is stated that since the petitioners have submitted their mark-sheets after due date i.e. 15.07.2002 it was not considered.

In paragraph 15 of the counter affidavit, it is submitted by the respondents that in the similar circumstances in Special Appeal No. 10 of 2003 State of Uttaranchal & others Vs. Akhilesh Chandra & 45 others, the Division Bench of the Court has admitted the Special Appeal again the judgment of single Judge dated 07.07.2002.

It is not disputed by either of the parties that the advertisement was issued on 24.06.2002 inviting application for appointment to the post of L.T. Grade Teachers in various schools and intermediate

colleges in Garhwal Mandal in the State of Uttaranchal. It is also not disputed that the last date for receipt of applications was fixed 15.07.2002. Further it is also not disputed that there is a clause II in the advertisement, which provides that on the last date fixed for submission of application, the applicant must possess the essential qualification, which are required for appointment. This clause further says that those persons, who have already appeared in the final examination which is completed before the date of advertisement and the result of whom is awaited, they may also apply, however, they will have to submit their mark-sheet within 3 days from the declaration of result failing which the said degree/examination shall not be considered.

The petitioner sin paragraph 7 and 9 of writ petition have submitted that petitioner No. 1 had appeared in M.A. Final (Hindi) exam from Garhwal University and the petitioner No. 2 appeared in final examination M.P.Ed. in the year 2002 from Nagpur University and the examination were completed before the date of advertisement. The result of petitioner of. 1 was declared on 15.07.2002 and after getting the mark-sheets the petitioner No. 1 submitted that same before the respondent no. 3 on 16.07.2002 and the result of petitioner No. 2 was declared on 25.07.2002 and after getting his mark sheet the petitioner No. 2 submitted the same before the respondent No. 3 on 27.06.2002.

In reply to paragraph 7 of the writ petition it is stated in the counter affidavit that the contents of para 7 of the writ petition are admitted to the extent that the petitioners have got their post graduation degree of M.A. and M.P.Ed. in the year 2002 but the petitioner have submitted their respective mark-sheets after due date i.e. 15.07.2002.

In reply to paragraph 9 of the petition the respondents have replied in paragraph 10 of the counter affidavit that the contents of paras 8 to 12 of the writ petition need no comments, as it relates to

record and detailed reply has already been given in the proceeding paras of this affidavit.

Similar was the position of petitioner No. 2.

In paragraph 7 of the writ petition it is specifically stated that the final examination of M.P.Ed. was completed before the date of advertisement and the result was declared on 24.07.2002 and he submitted his mark-sheet before the respondent no. 3 on 27.07.2002.

The reply of para 7 and 10 of the writ petition given by the respondents in the counter affidavit has already been quoted above. the respondents have not stated that the examinations of the petitioners were not over by the last date fixed for submission of application or they have submitted their mark-sheet after 3 days from the declaration of their results.

in the counter affidavit the respondents have relied on the decision of Selection Committee that they will not consider any documents, which is received after 15.07.2002, which is the last date for receipt of application as per advertisement.

in my opinion the Selection Committee cannot take any decision which is contrary to the condition of the advertisement.

learned standing counsel has submitted that a similar writ petition was allowed by singly Judge of this Court in Writ Petition NO. 1484 (S/B) of 2002 Akhilesh Chandra & 45 others Vs. State of Uttaranchal & others which was filed before this Court and the learned single Judge vide order dated 07.07.2003 disposed of the writ petition with a direction to the respondents to consider the candidature of the petitioners for appointment to the post of Assistant Teacher in L.T. Grade. that judgment was challenged in Special Appeal No. 10 of 2003 and the Division Bench vide order dated 11.08.2003 has admitted the Special Appeal and stayed the operation of order dated 07.11.2003.

The Special Appeal No. 10 of 2003 was admitted and stay was granted by the Division Bench on the ground that though there was a clause in the advertisement to the effect that if any candidate appeared in the examination before the date of advertisement but the result of the examination was not declared on or before last date for submission of the application then such candidate can submit their mark-sheet within 3 days from the date of declaration of their result. the Bench has held while granting a stay that the examination of the petitioners was not complete on the date of advertisement and it was going one even on 15.07.2002 which was the last date for filing the application. The Bench has further held that the State has stated that there was practical examination and theory examination conducted by Garhwal University, Srinagar. The examination got over only on 17.08.2002 and therefore, the petitioner were not eligible to be considered for appointment to the post of Assistant Teacher in L.T. Grade.

in the present case, it is not disputed that the examinations were completed prior to the advertisement and the mark-sheets were submitted within 3 days from the date of declaration of result as per the advertisement. the respondents cannot take benefit of the stay order passed in special appeal for the reason that in the case before Division Bench the examinations was not completed on the date of submission of application and were going on even after the last date of submission of applications.

for the reasons stated above writ petition is allowed. the respondents shall consider the mark sheets of the petitioners submitted as per advertisement dated 25.06.2002 for awarding quality points as per rule adopted by the respondents. No order as to costs.

Dated: 12.08.2004 (**M.M. Ghildiyal, J.)**

ASWAL